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9 **UNITED STATES BANKRUPTCY COURT**
10 **DISTRICT OF ARIZONA – TUCSON DIVISION**

11 In re

12 DAVID B. KARMEL,

13
14 Debtor.
15

Case No. 4:15-bk-02229-SHG

Chapter 11

**STIPULATION RE TREATMENT OF
CLAIM UNDER DEBTOR'S
PROPOSED CHAPTER 11 PLAN OF
REORGANIZATION**

SUBJECT PROPERTY:

8041 E Alvin Rd,
Tucson, Arizona 85750
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21 This Stipulation is entered into by and between Wells Fargo Bank, N.A. ("Wells Fargo") by
22 and through its attorneys of record, and Debtor, David B. Karmel ("Debtor"), by his attorney of
23 record.

24 The property which is the subject of this matter is commonly known as 8041 E Alvin Rd,
25 Tucson, Arizona 85750 ("Property"), which is more fully described in the Second Deed of Trust.
26 (*See* Claim No. 3-1).
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1 On October 26, 2006, Debtor executed a promissory note (the “Second Note”) in the
2 principal sum of \$84,792.00. The Second Note is secured by a Deed of Trust (“Second Deed of
3 Trust”) granting an interest in the Property. The Second Deed of Trust reflects that it was duly
4 recorded in the Pima County Recorder’s Office. (See Claim No. 3-1).

5 On March 4, 2015, Debtor commenced the instant bankruptcy case, by filing a voluntary
6 petition under Chapter 13 of the Bankruptcy Code in the District of Arizona – Tucson Division, and
7 was assigned bankruptcy case number 4:15-bk-02229-SHG (the “Bankruptcy Case”). (See Dkt. No.
8 1). On March 4, 2016, the court entered an Order Converting the Debtor’s Bankruptcy Case to
9 Chapter 11 under the Bankruptcy Code. (See Dkt No. 87).

10 On April 24, 2015, Wells Fargo filed its Proof of Claim for the Second Note listing a secured
11 claim of \$84,808.44, including pre-petition arrears of \$5,877.32. (See Claim No. 3-1).

12 On December 12, 2016, the Debtor filed his proposed First Amended Chapter 11 Plan of
13 Reorganization (“Plan”) and Amended Disclosure Statement. (See Dkt Nos. 175-176).

14 On December 27, 2016, Wells Fargo filed its Objection to Confirmation of the Plan
15 (“Objection”). (See Docket No. 183).

16 **THE PARTIES STIPULATE AS FOLLOWS:**

17 1. Wells Fargo shall have a general unsecured claim equal to the amount due under the
18 Note, plus Wells Fargo’s attorneys’ fees and costs in the Debtor’s Plan (“Unsecured Claim”). Wells
19 Fargo shall be entitled to its pro rata share of the dividend issued to general unsecured creditors in
20 the Debtor’s Plan. Wells Fargo’s lien related to its Unsecured Claim shall only be avoided upon
21 completion of the Debtor’s Chapter 11 Plan payments, receipt of a discharge, and the entry of a final
22 decree. In the event Debtor proceeds with a post-confirmation sale or refinance of the Property prior
23 to discharge, Wells Fargo may seek recovery of the full amount due under the Note. Wells Fargo
24 shall not be required to release its lien until the Debtor has received a discharge.

25 2. Except as otherwise expressly provided herein, all remaining terms of the Note and
26 Deed of Trust shall govern the treatment of Wells Fargo’s Claim.

27 3. The terms of this Stipulation are contingent upon the substantial consummation of the
28 Debtor’s confirmed Plan. The terms of this Stipulation shall be incorporated into any Amended Plan

1 and/or the Order of Confirmation. In the event of any discrepancy between the terms of this
2 Stipulation and the terms of the Debtor's Plan, the terms of this Stipulation shall control the
3 treatment of Wells Fargo's Claim.

4 4. In the event the Debtor's case is dismissed or converted to any other chapter under
5 Title 11 of the United States Bankruptcy Code prior to completion of the Debtor's Chapter 11 Plan
6 payments, receipt of a discharge, and entry of a final decree, the terms of this Stipulation shall be
7 void and Wells Fargo shall retain its lien in the full amount due under the Note.

8 5. In the event the Debtor seeks to sell the Property prior to receipt of a discharge, the
9 parties shall retain all rights under 11 U.S.C. §363.

10 6. Wells Fargo shall not be required to release the loan from bankruptcy status and/or
11 resume regular monthly statements until entry of a final decree and the close of the Debtor's Chapter
12 11 case.

13 7. In the event the Debtor asserts that Wells Fargo has failed to properly update its
14 internal system to comply with the terms of this Stipulation within a reasonable period of time after
15 an order is entered confirming the Debtor's Chapter 11 Plan of Reorganization, which shall be no
16 less than ninety (90) days, the Debtor shall be required to provide written notice of the alleged lack
17 of compliance to Wells Fargo and Wells Fargo's counsel of record, Aldridge Pite, LLP at 4375
18 Jutland Drive, Suite 200, San Diego, CA 92117, indicating the nature of the alleged lack of
19 compliance. If Wells Fargo fails to either remedy the alleged lack of compliance and/or provide an
20 explanation refuting the Debtor's allegation after the passage of ninety (90) days from the date Wells
21 Fargo receives said written notice (the "Meet and Confer Period") the Debtor may proceed with
22 filing the appropriate motion in bankruptcy court seeking Wells Fargo's compliance.

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8. Wells Fargo shall cast a ballot accepting the Debtor's proposed Chapter 11 Plan of Reorganization if such Plan and/or Order of Confirmation incorporates fully the terms of this Stipulation and the Debtor is in compliance with the terms of the Stipulation as of the ballot deadline. Wells Fargo hereby withdraws its Objection to Confirmation of the Plan.

IT IS SO STIPULATED:

Dated: _____

/s/ C.R. Hyde (with permission)

CHARLES R. HYDE

Attorney for Debtor

ALDRIDGE | PITE, LLP

Dated: February 9, 2017

/s/

JANET M. SPEARS

Attorneys for Wells Fargo